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SUBJECT: INDIGENOUS LAND USE RIGHTS EMERGING ISSUE

Classified By: Charge d'Affaires John Creamer for reasons 1.4 (b, d)

¶1. (C) Summary: With President Morales' ruling Movement Toward Socialism (MAS) party projected to take control of both houses of Congress in upcoming elections, attention has begun to turn to a package of 100 laws Morales has pledged to pass to implement the new Constitution, including several that would have significant impact on indigenous land use rights. The Constitution promises indigenous groups increased but vaguely-worded authority over the use of renewable and non-renewable resources in still-to-be-created Indigenous Autonomous Areas. It also discusses legal mechanisms for indigenous groups to claim jurisdiction over areas with indigenous majorities, potentially accelerating land use reform. Opposition and some GOB officials fear that until implementing legislation is passed, indigenous groups will use the Constitution's vague language to justify illegal takeovers of land and businesses. They are also concerned that once the legislation is passed, a large number of diverse indigenous groups could have significant control -- or at least veto power -- over resource development in large parts of the country, making investment (even by GOB-owned entities such as YPFB) more difficult. End summary.

Disputes Rising  
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¶2. (U) Since Bolivia's founding, disputes over land use rights have simmered and, on occasion, led to conflicts. Land reform began after the 1952 revolution, when the powerful National Revolutionary Party (MNR) broke up some of the largest land holdings and distributed parcels to peasant families (most of whom worked the land and lived in conditions approximating indentured servitude). Before the revolution, Bolivia's land distribution was the worst in Latin America, with some four percent of landowners possessing more than 82 percent of the land.

¶3. (U) The MNR had some success in changing this pattern, successfully distributing properties to between 300,000 to 400,000 families, mostly in the western Altiplano region. In 1996, President Gonzalo Sanchez de Lozada created the National Institute of Agrarian Reform (INRA) to revitalize reform efforts, especially in the eastern parts of the country. According to a 2006 World Bank study, INRA succeeded in clarifying the land tenure situation of 15.4 million

hectares, with 5.2 million hectares set aside as Original Community Reserves, or TCOs. In total, Bolivia has 109 million hectares.

14. (U) Despite this progress, the World Bank reports that, "the western valleys represent 60 percent of the landowners in the country but account for only 10 percent of the agricultural land (1.1 million hectares)," i.e. the bulk of arable land is in the eastern part of the country and owned by a minority of landowners. In May 2006, President Morales announced his intent to distribute about 12 million acres of state-owned land to indigenous rural workers, most of it in the eastern parts of the country (although not all of it is arable). Still, thus far the policy announcement has led to little in the way of concrete results, and many groups are getting restless.

15. (U) Over the past two years, groups such as the Landless Movement and the Homeless Movement (Movimiento Sin Tierra and Movimiento Sin Techo) have complained of INRA's sluggish pace and have occupied lands they consider unused, inappropriately titled, or "not fulfilling a social function," a term used in both the prior and current Constitutions. On February 5, in just one example of such conflicts, the Homeless Movement encouraged hundreds of families to occupy plots of land in semi-urban Santa Cruz. Over 200 police subsequently forced them out in a moderately violent clash. The Homeless Movement has reportedly engaged in over 30 such takings in Santa Cruz over the past year. In May, an indigenous group in Potosi forced the director of an Australian mining company to sign a document committing the company to leave the Chayanta municipality and turn the mine over to indigenous residents.

#### Implementing Legislation Coming

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16. (U) The Morales administration claims these conflicts will ease once the new Constitution is fully implemented and indigenous groups are further empowered. The Constitution calls for implementing legislation to create new Indigenous Autonomous Areas (IAAs) and to define what authority indigenous groups would have in these areas. Under the Constitution, today's TCOs will ultimately convert to IAAs. The Constitution also outlines ways to create new IAAs. Such a process would create a legal mechanism for indigenous groups at the local level to claim jurisdiction over large tracts of land, effectively decentralizing and accelerating the land reform process. As part of his overall package of implementing legislation, Morales announced he will introduce three key pieces of legislation related to the IAAs, including the "Framework Law of Autonomies and Decentralization," the "Jurisdictional Demarcation Law," and the "Organic Autonomy Law." No drafts of the legislation are available yet, but the laws' mandates are described in the new Constitution.

17. (U) The Framework Law of Autonomies and Decentralization will specify to what extent each of the five new autonomy levels (i.e. national, departmental, regional, municipal, and indigenous) will control natural resources, regulate investments and businesses operations, and collect taxes and royalties within their boundaries. Several articles within the Constitution speak to the content of the Framework Law. Article 304 directs that within IAAs indigenous groups shall have exclusive right to manage and administer renewable natural resources and to administer taxes, assessments, and "special contributions." Within the IAAs, indigenous groups may also "control and monitor" the "socioambiental" aspects of hydrocarbon- and mining-related activity.

18. (U) In Article 353, the Constitution directs that indigenous groups have preferential access to the benefits of natural resource development generally, without specifying the impact of this directive, especially within IAAs. Article 403 directs that indigenous groups in IAAs be consulted before development on nonrenewable resources occurs and that they have the authority to set aside areas where no

development will occur. (Note: Article 403 affirms the language in the 1991 ILO Indigenous and Tribal People's Convention (Convention 169) and, if implemented, would seem to give indigenous groups veto power over resource development. End note.)

¶9. (U) According to Articles 191 and 192, the Jurisdictional Demarcation Law will define what legal authority indigenous groups have within IAAs and how the "indigenous justice" system will coexist with the "ordinary justice" system employed in the rest of the country. Article 191 states that indigenous justice will apply not only to members of a particular indigenous group but also to any judicial acts that are realized within an IAA or impact an IAA, potentially implying that legal contracts affecting IAAs would need to abide by the indigenous justice system of a particular IAA.

¶10. (U) The Morales administration also plans to devise an Organic Autonomy Law to implement Article 293, which discusses how indigenous-majority areas not already designated as a TCO may convert to an IAA. This law will also discuss how indigenous groups would change municipal districts into IAAs.

#### Economic and Social Impacts?

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¶11. (C) Until drafts of the implementing legislation are available, it will be difficult to estimate the economic and social impact of the IAAs and the level of control that will be given over to indigenous groups. Perhaps the most important issue will be to define exactly how the State will manage hydrocarbon production and engage in international development contracts while simultaneously granting indigenous groups some measure of control, up to and possibly including veto authority within IAAs. The State has a vested interest in maximizing hydrocarbon exploration and income, and the Morales administration has centralized this control in the past, but the Constitution seems to call for at least some degree of decentralization of authority. The situation is no less complex regarding renewable resources such as timber and water, over which indigenous groups appear slated to have an even higher degree of control. If indigenous groups do receive some measure of control, it could slow negotiations over any projects that would take place in or affect IAAs, especially if contracts have to respect "indigenous justice" provisions, which would likely vary from IAA to IAA.

¶12. (C) Socially, if the implementing laws support the thrust of the Constitution, the IAAs will have some significant political and economic advantages over non-indigenous municipalities. IAAs will have more control over natural resources and will have more flexibility in levying taxes or creating other income sources. (Municipalities may not create taxes analogous to national or departmental taxes, while IAAs may do so.) Further, IAAs will be able to define their own systems of justice, per the Jurisdictional Demarcation Law. Municipalities, many of which have complained of a lack of access to police and investigators, will continue under the "ordinary" judicial system. These advantages could result in increased friction. Some contacts have complained that the new constitution, and the pending implementing legislation, will privilege indigenous groups and create "first class" and "second class" citizens. (On the other hand, as one's ethnicity is largely self-defined in Bolivia, in an example of "if you can't beat them, join them" thinking, there could even be large-scale creation of IAAs by municipalities to take advantage of the apparent legal benefits and the increased amount of local control.)

#### Comment

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¶13. (C) With the MAS set to take full control of the Plurinational Assembly, indigenous groups and other parts of their political base will likely increase their demands for land reform. The Constitution, although vague and often

contradictory, promises indigenous groups significant benefits, and they are eager to collect. Granting such groups control over natural resources will conflict with the GOB's top-down, state-driven developmentQdel, as we have already seen with YPFB's recent criticisms of indigenous groups' efforts to extract more benefits from the firm. The Constitution states that implementing legislation must be completed within 180 days of the seating of the new Plurinational Assembly, or in July 2010. End comment.  
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